

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	Case No. 8:04CR408
)	
Plaintiff,)	
)	
v.)	ORDER
)	
ROBERT L. WILLIAMS,)	
)	
Defendant.)	

This matter is before the court on remand from the Eighth Circuit Court of Appeals for the limited purpose of determining defendant's in forma pauperis status. Filing No. 37. Defendant entered a plea of guilty to the charge of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g), and was sentenced to forty-one months' imprisonment. Filing Nos. 17 and 30. Defendant has filed a motion for leave to appeal in forma pauperis on appeal, Filing No. 29. By previous order, defendant was directed to file an affidavit of financial status, Filing No. 33, and has now filed that affidavit. Filing No. 39. The court has reviewed the motion and affidavit.

An indigent defendant is entitled to an in forma pauperis appeal from his conviction and to the assistance of counsel on that appeal unless his appeal is found to be wholly frivolous. *Thompson v. United States*, 493 F.2d 480, 481 (8th Cir. 1974) (per curiam); 28 U.S.C. § 1915. See also *United States v. Serrano-Sanchez*, 206 F.3d 1300, 1300 & n.1 (8th Cir. 2000) (per curiam) (noting that "[t]he procedure in which a district court certifies that an appeal is not taken in good faith, and denies leave to proceed on appeal in forma pauperis, should be limited to civil cases," whereas, "[i]n direct criminal appeals, district courts should process a notice of appeal in the ordinary fashion," and counsel should pursue the frivolity issue, if necessary, in the Court of Appeals pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *Penson v. Ohio*, 488 U.S. 75 (1988)).

The defendant seeks leave to proceed in forma pauperis on appeal from his conviction and sentence. In order to proceed in forma pauperis, the defendant must comply with Fed. R. App. P. 24 which provides that a party seeking to proceed in forma pauperis on appeal must file a motion and affidavit in the district court that shows his inability to pay or to give security for fees and costs; claims an entitlement to redress; and states the issues he intends to present on appeal. Fed. R. App. P. 24. (a)(1); 28 U.S.C. § 1915(a).

Defendant's submissions comply with these requirements. The court finds defendant has shown that he is unable to pay fees and costs or to give security therefor. Furthermore, defendant seeks to appeal his criminal conviction and sentence and is entitled to seek that redress. Accordingly,

IT IS ORDERED that defendant's motion for leave to appeal in forma pauperis, Filing No. 29, is granted.

DATED this 7th day of July, 2005.

BY THE COURT:

s/Joseph F. Bataillon
JOSEPH F. BATAILLON
UNITED STATES DISTRICT JUDGE